

FILED

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

2013 MAR -8 A 10:41

HESHAM M. ABBAS,

CLERK US DISTRICT COURT
RICHMOND, VIRGINIA
Plaintiff,

v.

C.A. No. 3:13CV147

**VIRGINIA COMMONWEALTH UNIVERSITY
HEALTH SYSTEMS d/b/a MEDICAL COLLEGE
OF VIRGINIA, et al.,**

Defendants.

NOTICE OF REMOVAL

The Defendants, Christopher Woleben ("Woleben") and Isaac Wood ("Wood"), by counsel, and pursuant to 28 U.S.C. § 1441 *et seq.*, remove this civil action, originally filed in state court, to this Court:

1. On January 4, 2013, Hesham M. Abbas ("Abbas" or "Plaintiff") filed a Complaint in the Circuit Court for the City of Richmond (Case No. 13-8400). A copy of the Complaint is attached.

2. Defendants Woleben and Wood have now been served with the Complaint. They were served with the Complaint on February 7, 2013. Based upon information and belief, Virginia Commonwealth University Health Systems ("VCUHS") was served on February 7, 2013. Therefore, this notice of removal is filed in a timely manner pursuant to 28 U.S.C. §1446.

3. Defendants Woleben and Wood will be represented by the undersigned Assistant Attorney General and consent to removal of the instant matter to this Court.

4. Counsel for VCUHS and Yongyue Chen ("Chen") has indicated that these defendants will file a consent to removal shortly.

5. A responsive pleading in the form of a Demurrer/ Motion to Dismiss and Plea of Immunity and a Motion Craving Oyer were filed in state court on behalf of Woleben and Wood. Copies of each pleading filed are attached.

6. A responsive pleading in the form of a Demurrer/Motion to Dismiss and Plea of Sovereign Immunity was filed in state court on behalf of VCUHS. A responsive pleading in the form of a Demurrer/Motion to Dismiss and Pleas of Sovereign and Qualified Immunity was filed on behalf of Chen in state court. Copies of each pleading filed are attached.

7. The Complaint alleges that Abbas was discriminated against when he was dismissed from the medical school at Virginia Commonwealth University for lack of academic process in 2011 in alleged violation of his federal due process and equal protections rights pursuant to 42 U.S.C. § 1983. He also alleges a 42 U.S.C. § 1983 claim for seizure. Abbas alleges a breach of contract claim against the medical school. The United States District Court for the Eastern District of Virginia thus has jurisdiction by reason of 28 U.S.C. § 1331, in that this action arises under the Constitution or Laws of the United States as asserted in the Complaint. 28 U.S.C. § 1441. *See, e.g.*, Complaint ¶¶ 14 - 29.


8. Removal also is proper as the Complaint contains allegations of the denial of federally assured rights by persons acting under color of authority of law. *See* 28 U.S.C. § 1443. *See, e.g.*, Complaint ¶¶ 14 - 29.

9. Defendants, by counsel, will give written notice of the filing of this Notice to the clerk of the Circuit Court for the City of Richmond and Plaintiff's counsel as required by 28 U.S.C. § 1446(d).

10. Woleben and Wood file a memorandum in support of the previously filed Demurrer/Motion to Dismiss and Plea of Immunity with this Notice of Removal.

WHEREFORE, these Defendants, by counsel and pursuant to 28 U.S.C. § 1441 *et seq.*, remove this civil action, originally filed in the Circuit Court for the City of Richmond (Case No. 13-8400), to this Court and respectfully ask that this action proceed in this Court as an action properly removed to it.

Respectfully submitted,



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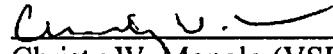
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CERTIFICATE OF SERVICE

I hereby certify that on this the 8th day of March, 2013, the foregoing Notice of Removal filed by Defendants Christopher Woleben, M.D. and Isaac K. Wood, M.D., was mailed to counsel for the Plaintiff, D. Hayden Fisher, Esquire, Fisher and Clarke, P.C., P.O. Box 7321, Richmond, VA 23220 and counsel for VCUHS and Chen, Charles Allen, Goodman, Allen and Filetti, 4501 Highwood Pkwy, Suite 201, Glen Allen, VA 23060.



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